IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.388 OF 2007

Primo Enterprises Pvt.Ltd. .. Petitioner
V/s
The Addl.Commissioner of
Income-Tax, Range 1(2),
Mumbai & Ors. .. Respondents

Mr.J.D.Mistri with Mr.R.Murlidhar and Mr.B.Das i/by M/s.Gagrats for the Petitioner.

Mr.Ashok Kotangale for Respondent Nos.1, 2 & 7.

Mr.Madhav Rai i/by M/s.Negandhi Shah & Himayatullah for Respondent No.3.

CORAM : DR.S.RADHAKRISHNAN &
J.P.DEVADHAR, JJ.

DATE : 5th March, 2007.

P.C.:

1. Heard the learned Counsel for the Petitioner, the learned Counsel for Respondent Nos.1, 2 & 7 and the learned Counsel for Respondent Nos.3. In view of the order we propose to pass the presence of Respondent Nos.4, 5 & 6 is not necessary.

2. Rule. Rule is made returnable forthwith. By consent taken up for hearing. It appears that the Petitioner's appeal is pending before the CIT (Appeals) against the assessment order for the Assessment Year 2004-2005 raising the demand of Rs.90,70,19,482/-. During the pendency of the Appeal the Petitioner had moved the Assessing Officer for a stay, which was

rejected. Thereafter the Petitioner had moved an application before the Commissioner of Income Tax - Respondent No.2, for stay and and the said application has been rejected by the Respondent No.2, which was communicated to the Petitioner by the communication dated 23rd February, 2007.

3. The learned Counsel for the Petitioner seeks leave to amend the Petition to bring on record the aforesaid order of the Commissioner of Income Tax and he also challenges the same. The draft amendment which is tendered is taken on record and marked as "X" for identification. Leave is granted to amend the petition as per the draft amendment. Amendment to be carried out within a period of one week from today.

4. Pursuant to our order dated 23.02.2007 all the proceeds of 108000 capital gain bonds lying with Respondent No.3 Bank have already been deposited with the BNP PARIBAS (French Bank), for a period of 16 days.

5. The learned Counsel for the Petitioner as well as the learned Counsel for Respondent No.1, 2 & 7 state that the Appeal filed by the Petitioner is now ripe for hearing before the CIT (Appeals). In view thereof, we pass the following order.

A. The Petitioner shall not withdraw a sum of Rs.91 Crores, which will remain with the said Bank till the disposal of the Appeal. The Petitioner shall not encumber with the said amount of Rs.91 crores in any manner whatsoever.

B. Excluding the aforesaid amount of Rs.91 crores which the Petitioner shall not withdraw, the Petitioner is permitted to withdraw the amount in excess of Rs.91 crores from the BNP PARIBAS (French Bank) at the time of maturity of the said amount.

C. It is made clear that the Petitioner is at liberty to renew the aforesaid amount of Rs.91 crores from time to time till the disposal of the Appeal, and that the Petitioner will also be entitled to withdraw the accrued interest thereon.

D. Since the Revenue is fully secured by the aforesaid amount of Rs.91 crores, which the Petitioner is not allowed to withdraw from the aforesaid Bank, the learned Counsel for the Revenue has no objection for release of Cumulative Preferential Shares of Respondent No.6 as mentioned on Page No.47 of the Petition. Hence the aforesaid Cumulative Preferential Shares of Respondent No.6 are allowed to be released.

E. It is made clear that in the event the CIT (Appeals) final order in the pending Appeal goes adverse to the Petitioner, the Respondents shall not adopt any coercive measures against the Petitioner, and that the Respondents shall also not withdraw the aforesaid sum of Rs.91 crores, for a period of four weeks from the date of communication of the said order of the CIT (Appeals).

6. Petition stands disposed of in the above terms.

(J.P.DEVADHAR, J.) **(DR.S.RADHAKRISHNAN,J.)**